Supreme Court, U.S.
FILED
AUG 6 1991
OFFICE OF THE CLERK

(1)

91-291

NUMBER 91-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI

K. KAY SHEARIN
1301 Maple Avenue
Wilmington DE 19805
302-995-6028

Counsel for Petitioners

NUMBER 91-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI

K. KAY SHEARIN
1301 Maple Avenue
Wilmington DE 19805
302-995-6028

Counsel for Petitioners

I. QUESTIONS PRESENTED

A. Did the Chancery Court of the State of Delaware violate the First Amendment by awarding even limited possession of a hierarchical church's building to dissident former members of the church?

B. Must the church await a final judgment on the merits before seeking redress for the damage done by the Chancery Court's preliminary injunction?

II. TABLE OF CONTENTS

		Page
I.	QUESTIONS PRESENTED	i
II.	TABLE OF CONTENTS	ii
III.	TABLE OF AUTHORITIES . . .	iv
IV.	OPINIONS BELOW	1
V.	JURISDICTION	2
VI.	CONSTITUTIONAL PROVISIONS .	4
VII.	STATEMENT OF THE CASE . . .	5
VIII.	ARGUMENT FOR ALLOWING WRIT	22

APPENDIX

Order of Delaware Supreme Court sought to be reviewed . . . A01

Factual & legal findings in earlier related case . . . A05

Order in earlier case A10

Delaware Supreme Court Rules
Rule 41 . . . . . A12
Rule 42 . . . . . A14

III. TABLE OF AUTHORITIES

Page(s)

CASES:

Cantwell v. Connecticut, 310 U.S. 296 (1940) 23

Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956) 3, 9, 18, 27

Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987) 25

Everson v. Board of Education, 330 U.S. 1 (1947) 23

Jones v. Wolf, 443 U.S. 595 (1979) 4, 17

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) 3, 23

Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960) 3, 23

Little v. First Baptist Church, 475 U.S. 1148 (1986) 4, 25-26

Maryland & Virginia Eldership v. Church of God, 396 U.S. 367 (1970) 3, 16-17

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969) 3, 16, 20, 24

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) 4, 24

Watson v. Jones, 80 U.S. 679 (1871) 3, 10, 16, 22-23

CONSTITUTION:

Amendment I 4

Amendment V 4

Amendment XIV, Section 1 . . 4

STATUTES:

28 U.S.C. § 1257(a) 2

SUPREME COURT RULES:

Rule 10.1 (b) & (c) 2

Rule 13.1 2

L. Tribe, American Constitutional Law §14-12 (1978) 22, 24

IV. OPINIONS BELOW

The 25 June 1991 order of the Supreme Court of the State of Delaware--denying, without a separate opinion, certification of Petitioners' appeal of the Chancery Court's interlocutory 11 June 1991 order--is set forth in the appendix at A01-A04.

The transcript of the Chancery Court's 19 June 1991 denial of Petitioners' motion for certification of their appeal of that court's 11 June order is on file in both that court and the state Supreme Court.

The 11 June 1991 letter opinion of the Court of Chancery of the State of Delaware --denying Petitioners' motions for (1) dismissal for failure to state a claim for which relief might be granted and (2) dissolution of a preliminary injunction entered on 15 May 1991--is on file in both those Courts. The 15 May opinion is unof-

ficially reported at [1991] Del.Corp.Lit. Rep. 8741 (Del.Ch. 1991) and on file in both Delaware courts.

V. JURISDICTION

On 25 June 1991 Delaware's court of last resort denied review of the lower state court's 19 June ruling, which interlocutory order was subject to discretionary review under Del.Sup.Ct.R. 42 [A14-A18]. Petitioners and Respondents were the only parties to those proceedings.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(a) and this Court's Rules 10 (b)&(c) and 13.1: The Delaware Supreme Court's 25 June decree violated Petitioners' title, right, and privilege --set forth in the First Amendment to the Constitution--to use their church building and govern their church without interference by civil/judicial authorities.

By allowing the Chancery Court's ruling to stand, Delaware's court of last resort decided this First Amendment federal question: (1) in direct conflict to the decision of the United States Court of Appeals for the District of Columbia Circuit in Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), a case factually the same as this one and involving the same church, and (2) in direct conflict to this Court's applicable decisions from Watson v. Jones, 80 U.S. 679 (1871), through Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960), Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), Maryland & Virginia Eldership v. Church of God, 396 U.S. 367 (1970),

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), Jones v. Wolf, 443 U.S. 595 (1979), and Little v. First Baptist Church, 475 U.S. 1148 (1986).

VI. CONSTITUTIONAL PROVISIONS

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

Amendment V:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VII. STATEMENT OF THE CASE

In the middle of Wilmington, Delaware, in a terraced, arbored plaza next to the J. Caleb Boggs Federal Building (where the District Court sits) and facing the Carvel State Office Building and the City/County Building (for Wilmington and for New Castle County), stands a large gold-on-blue metal state historical plaque reading:

> GRAVESITE OF
> BISHOP PETER SPENCER (1779-1843)
> AND HIS DEVOTED WIFE, ANNES
> Born a slave, Bishop Spencer was the father of Delaware's independent Black church movement. In 1813, he founded the Union Church of Africans, presently known as the African Union Methodist Protestant Church. The mother AUMP church stood on this site from 1813 to 1970. The Union American Methodist Episcopal Church (UAME), formally organized in 1865, traces its origins to Spencer. He was also the founder of "August Quarterly" in 1813, one of the oldest Black folk festivals in America.

The record in the Chancery Court supports all the facts set forth on that

plaque and shows that on 18 September 1813 Spencer recorded Articles of Association for the African Union Church providing, inter alia:

> Members of the said Church (now duly elected) and their Sucesors duly qualified and elected as hereinafter directed shall be Trustees for the purposes and with the powers and privileges hereinafter granted of the said Corporation and of all and every other Church or place of meeting for public worship shall at any time hereafter become the property of this Corporation. . . . The said Corporation shall have, hold, possess and enjoy the temporal property which they have at this time or shall hereafter acquire. In trust for the Religious uses of the Ministers and Preachers of the said "Union Church" for them and their African Brethren and their descendants of African Race, and also for the Ministers and Teachers of the African Brethren duly licensed and ordained according to the Discipline adopted by this corporation.

Numerous popular and scholarly publications, several of them in evidence in the Chancery Court, show that this charter was that not only of the denomination but also of the mother church congregation,

the only church building Spencer owned then. Over the years many more local churches were established, and by 1991 there were forty congregations in six states. Most or all of the local churches were separately incorporated and held legal title to the buildings in which they met, but all were governed by the denomination's Book of Discipline and sent representatives to the various conferences that are the legislative and judicial bodies in Methodist churches.

In 1924 the mother church filed a separate certificate of incorporation changing its name to "Mother African Union First Colored Methodist Protestant Church." In 1941 the denomination filed a separate certificate of incorporation changing its name to "African Union First Colored Methodist Protestant Church," and in 1953 it filed an amendment changing its

name to "The Conference of African Union First Colored Methodist Protestant Church." At some time the Conference started using the name "African Union Methodist Protestant" Church, and so did many of the local churches, so the denomination is commonly known as the AUMP Church, although that name was never officially recorded.

When the part of Wilmington where the mother AUMP church stood was rebuilt, the Church used the proceeds of the sale of the land that is now Spencer Plaza to buy in 1969 an existing church building from the Second Baptist Church of Wilmington, taking title in the name of the Mother AUFCMP Church corporation. That building has since been used as the mother church for the AUMP denomination; its ownership is the crux of this case.

As shown by the opinion, findings of

fact and conclusions of law [A05-A09], and judgment order [A10-A11] in Conference of African Union First Colored Methodist Protestant Church v. Cleaver, C.A.No. 2960-53, Morris, J. (D.C. July 25, 1955), aff'd, 240 F.2d 57 (D.C. Cir. 1956), which are in evidence in the Chancery Court, in about 1953 a majority of the members of St. Paul AUFCMP Church in Washington, D.C., voted to secede from the AUMP Church because they were unhappy the Bishop would not appoint the pastor they wanted.

St. Paul's was separately incorporated in the District of Columbia and held legal title to the church building it used. Its members purported to change the name of their church to "St. Paul Methodist Church"; although they had always before abided by the AUMP's Book of Discipline and employed the pastors assigned by the

Presiding Bishop of the AUMP, they now stopped cooperating with the AUMP.

The then-Bishop sued St. Paul's and its new officials to require its building to be used for the denomination's purposes, not the dissidents'. In 1955, after trial, the District Court ruled the AUMP was a hierarchical church, so under the rule first set forth in Watson v. Jones, 80 U.S. 679 (1871), control had to be awarded to the denomination. In 1956 the Appellate Court explicitly affirmed those findings and conclusions in its one-page reported opinion. 240 F.2d at 57.

Minutes of a 1986 meeting of the trustees of the Mother AUMP Church, in evidence in the Chancery Court, show they were dissatisfied the then-Bishop would neither appoint the pastor they wanted nor meet with them to discuss his refusal, and they decided to seek ways to withdraw from

the AUMP Church, which they labeled a "dictatorship." At about the same time, their nominee, one Rev. Albert Norwood Jarman Sr., was an unsuccessful candidate for the office of Bishop Coadjutor, the officer who would become Presiding Prelate when that office next became vacant. Petitioner Delbert L. Jackson won the election and later became Presiding Prelate, which he has been for about three years now.

Like his predecessor, Bishop Jackson refused to appoint Jarman pastor of the Mother Church because Jarman, a married man, was widely reputed and believed to be having an affair with one Jane J. Gibbs, a trustee of the Mother Church. Because the Mother Church was used for so many denominational functions, and its pastor was therefore highly visible, Church officials decided to appoint Jarman to a church in

Pennsylvania where his conduct would not create so much scandal.

The continuing friction between Jackson and the Jarman-Gibbs faction came to a head in March 1991 when a former AUMP minister died, and his widow asked that he be buried from the Mother AUMP Church, whose pastor he had once been. In the meantime, however, he had left the AUMP Church amidst unfavorable publicity, and the Bishop and Conference both ruled, as the Book of Discipline authorized them to do, that Rev. Smith's funeral could be held at either of two other specific AUMP churches, but not at the Mother Church. The trustees of the Mother Church held the funeral there anyway, on the day before Easter, and thus created a confrontation with the AUMP hierarchy.

At a regular meeting in January, the Conference's General Session had adopted

a resolution, thus making it part of the Book of Discipline, specifying that any property titled in the name of a local AUMP church was nevertheless held in trust for the denomination. At the Annual Conference on 6 April 1991, that body authorized, as provided in the Book of Discipline, title to all real estate held in the names of the local churches to be transferred to the name of the Conference, which is to say the denomination, and authorized the pastor of each local church to execute the deed. After that meeting, the pastor (and ex officio trustee) of the Mother Church executed a quitclaim deed conveying title to the Mother Church building to the Conference; that deed was properly recorded on 8 April. (The Recorder of Deeds happens to be one of Respondents' attorneys in this case.)

On 8 April Bishop Jackson, with the

concurrence of three Elders, removed the Mother Church's pastor, as the Book of Discipline authorized them to do, for insubordination in not paying the Mother Church's assessment, due at the Annual Conference on 6 April. On 9 April the Bishop appointed Rev. Thomas Moon, a former pastor of the Mother Church whose removal the congregation had opposed at the time, to be the new pastor.

Although the Book of Discipline prohibits their doing so, the Mother Church's nine trustees called a special meeting for 9 April to discuss withdrawing from the AUMP Church. By their own admission, fewer than half the at least 170 members attended, so there was no quorum, and the vote was 68 in favor, 10 opposed, and 4 abstaining.

When Pastor Moon arrived at the Mother Church on 9 April, the dissidents would

not let him enter and called the Wilmington police to keep him out. When he returned later, he found the locks had been changed, so after consultation with the Bishop and their attorney, he had a locksmith change the locks again and hired a security guard to keep any unauthorized persons from taking possession.

The Pastor and Elders revoked the membership of the nine former trustees of the Mother Church, which necessarily terminated their status as trustees, too. Pastor Moon and three faithful members of the Mother Church congregation met by telephone and elected the three members trustees; the next two Sundays the remaining membership ratified their election.

Beginning on 10 April Pastor Moon presented proper corporate resolutions to the bank holding the Mother Church's accounts, to change the signatories on the

accounts to the new trustees, but the bank refused to cooperate, and the former trustees have so far managed to keep those funds away from the AUMP Church, an amount Petitioners have heard is about $30,000.

On 18 April two of the former trustees, "individually and on behalf of all others similarly situated," filed suit against Petitioner Jackson in Chancery Court and moved for a temporary restraining order to get immediate possession of the building. At oral argument on 19 April, and in Petitioner Jackson's brief opposing the TRO filed that same day, he raised the First Amendment federal question at issue here, citing two Delaware lower-court cases as well as Watson v. Jones, 80 U.S. 679 (1871), Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), Maryland &

Virginia Eldership v. Church of God, 396 U.S. 367 (1970), and Jones v. Wolf, 443 U.S. 595 (1979).

Vice Chancellor Jacobs chose not to address the First Amendment issue and kept directing Petitioners' counsel to address the issues "as if" it were strictly a corporation-law case. He granted the plaintiffs a temporary restraining order allowing them to use the Mother Church building at several specified times a week, including most of Sunday. They immediately began holding services led by persons not approved by the AUMP, a violation of the Book of Discipline.

In Petitioner Jackson's 3 May brief opposing the motion for a preliminary injunction and at oral argument on 6 May, he again raised the First Amendment issue and pointed out that the plaintiffs lacked standing to bring the suit, and the Bishop

was not the proper defendant. The Vice Chancellor then suggested he make the Conference a defendant and the Mother Church corporation a plaintiff, and Respondents' counsel so moved. In his 15 May opinion granting a preliminary injunction on the same terms as the TRO, the Vice Chancellor again declined to address the Constitutional issue, saying the question was "which corporation . . . owns and is legally entitled to control the contested properties."

On 6 May Petitioner filed his motion for dismissal for failure to state a claim, for the reasons given in his 3 May brief and at oral argument on 6 May. Petitioner also raised the facts of Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), but the Vice Chancellor refused to allow argument

because, he said, the facts did not appear in the reported opinion and the case had been 30 years ago anyway.

Because it had been so long since that case was closed, the record was archived, and it took Petitioners about six weeks to have it retrieved by the District Court and get copies of the pertinent parts. Petitioners then, on 5 June, moved for dissolution of the 15 May preliminary injunction, arguing that the Constitution required dismissal of the suit.

On 11 June the Chancery Court denied Petitioners' motions to dissolve the injunction and for dismissal. On 17 June Petitioners applied to the Chancery Court for certification to appeal that interlocutory order and also filed notice of the appeal in the state Supreme Court. At the Chancery Court's hearing on 19 June Petitioner again argued that the

Constitution deprived the court of jurisdiction to interfere in this controversy, but the court denied certification.

To their notice of appeal Petitioners had attached, as the Supreme Court's Rule 42(d)(iv)(A) required [A17], a copy of the application to the Chancery Court, which set forth this Court's controlling decisions. In their supplemental notice of appeal filed 24 June Petitioners again cited Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), and asserted the federal Constitutional question.

In its 25 June order the Supreme Court refused to review the case and did not even address the federal question.

Trial is now scheduled to begin on 16 September, the dissident former members are still holding non-AUMP services in the

Mother Church, Petitioners have no idea what has happened to the money from the Mother Church's bank accounts, and at least half a dozen other congregations have undertaken legal action to take their buildings out of the AUMP.

The only attention anyone has paid to Petitioners' counsel's repeated efforts to raise the federal issue is that ever since, on behalf of St. Paul AUFCMP Church of D.C., she filed a civil rights suit against the nine former Mother Church trustees in federal court in Delaware, to protect St. Paul's beneficial interest in the Mother Church, Respondents' counsel, the federal judge, and the vice chancellor have jointly and severally threatened her and her clients with sanctions for supposedly violating the Chancery Court's 19 April TRO.

VIII. ARGUMENT FOR ALLOWING WRIT

As discussed at L. Tribe, American Constitutional Law §14-12 (1978), this Court first announced in Watson v. Jones, 80 U.S. 679 (1871), its position that in a dispute over church property, a court must defer to the highest applicable authority in a hierarchical church.

It cannot be doubted the AUMP Church is hierarchical: In Watson, the Court mentioned as examples of hierarchical churches "the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian." 80 U.S. at 729. As Judge Morris ruled in 1955, the AUMP clearly meets the Court's criteria for a hierarchical church because the pastors of the local churches are appointed by the head of the denomination, all members conduct their affairs according to the Book of Discipline, and

there is a hierarchy of legislative and judicial conferences governing the Church.

Watson was announced as a matter of common law, however, and it was not until Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), that the Court announced the same result was required by the First Amendment's free exercise and establishment clauses, made binding on the states by Cantwell v. Connecticut, 310 U.S. 296 (1940), and Everson v. Board of Education, 330 U.S. 1 (1947).

Kedroff invalidated a New York state statute that purported to transfer control of a church in New York, but when the New York courts tried to achieve the same result, this Court applied the same rule in Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960). Here, too, it is Delaware's judiciary, not its legislature, that is depriving the AUMP of control of a

particular church because the court does not approve of the way the hierarchy is governing the local church. The Chancery Court has, without due process and without compensation, taken the Mother Church from the AUMP Church and given use of it to the dissident former members.

The teaching of Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), and Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), is that

> once a hierarchical church's highest ecclesiastical tribunal has interpreted its own constitution . . . such an interpretation is binding on all civil courts. Issues of church organization, no less than questions of church procedure or doctrine, are beyond civil authority.

L. Tribe, supra at 878-79 (footnote omitted).

> [R]eligious organizations have an interest in autonomy in ordering their

> internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. . . . [T]hese organizations must be protected by the (Free Exercise) (C)lause.' . . . [F]urtherance of the autonomy of religious organizations often furthers individual religious freedom as well.

Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 341-42 (1987) (citations omitted) (Brennan, J., with Marshall, J., concurring).

> Because religious organizations may own property and enter into contracts, it is inevitable that they will become involved in legal disputes. However, where the use of property or the terms of contracts necessitate reference to ecclesiastical principles or authority, courts must exercise extreme care to avoid taking sides . . . [T]he court ordinarily must discern from the relevant canonical law what body is authorized to make a particular decision within the church, and . . . what decision that body has reached. Having done so, the court may not inquire whether the decision was made arbitrartrarily or whether it conflicts with the ecclesiastical precepts of the organization.

Little v. First Baptist Church, 475 U.S.

1148, 1149 (1986) (citations omitted) (Marshall, J., with Brennan, J., dissenting).

The purpose of a preliminary injunction is to preserve the status quo pending a final decision in litigation. When Respondents sued Petitioner Jackson, the status quo was that the Conference held legal title to the Mother Church building, had a new pastor in place to minister to the congregation, had full possession of the building, and had excommunicated the former trustees--all as authorized by the Book of Discipline and the Conferences whose members were elected from the various congregations, including the Mother Church. The Chancery Court's TRO and preliminary injunction radically changed that situation by allowing the dissident former AUMP Church members to use the Mother Church building for

activities explicitly prohibited by the Book of Discipline.

In refusing certification of the interlocutory appeal, the Delaware Supreme Court said [A03] Petitioners were merely attempting to seek review of the Chancery Court's preliminary injunction after the time for appealing its entry had expired. To a certain extent, they were, but Petitioners had little choice in the matter: The vice chancellor had refused to let them raise Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), without that court's records before him, and by the time Petitioners were able to get those copies, the time for the appeal had expired.

It is axiomatic, however, that in equity an issue may be raised again when circumstances change, and circumstances

changed once Petitioners had certified copies of the District Court's ruling, after trial, that the AUMP Church was a hierarchical denomination or "general" church founded in 1813, of which the local churches were subordinate members or units. The Chancery Court had held on 15 May that it was "[t]he Mother Church [that] was incorporated as the 'African Union Church' on September 18, 1813" and that the denomination was not founded until "[t]he Conference was incorporated on September 19, 1941." Leaving aside the question of full faith and credit for the D.C. court's findings, the evidence in the Chancery Court's own record supported Judge Morris's findings and refuted Vice Chancellor Jacobs's.

Even if the only order Petitioners were appealing were the denial of their motion to dissolve the preliminary

injunction, that order still fell within the scope of Del.Sup.Ct.R. 41 & 42 [A12] and was subject to appeal because the preliminary injunction decided the parties' substantial rights to the property pending the litigation and was in direct conflict with the D.C. appellate court's decision.

But it was not only the denial of that motion Petitioners appealed: The same order denied their motion to dismiss for failure to state a claim, an issue Petitioners had addressed in briefs and arguments opposing the TRO and the preliminary injunction. As even the Vice Chancellor advised Respondents' counsel, at an office conference on 10 June, the appeal of the denial of the motion to dismiss was timely and was based on different legal theories than the appeal of the refusal to dissolve the injunction.

Although Petitioners' counsel clearly

raised the Constitutional issue in their application for certification--and argued at lines 12-14 of page 18 of the transcript of the 19 June hearing: "We do dispute the Court's jurisdiction because we believe that this is one of those church cases where the civil courts cannot interfere"--the Delaware Supreme Court did not even address the denial of the motion to dismiss, much less the Constitutional issues involved.

Granting the motion to dismiss would probably have terminated the litigation, or at least substantially reduced further litigation, so the criteria of Rule 42(b) [A15] were met. When the Chancery Court entered its preliminary injunction, its opinion was in direct conflict with the decision of the D.C. appellate court and earlier decisions of the Chancery Court itself, not to mention the controlling

decisions of this Court, so the criteria of Rule 41(b) [A12] were met.

All the material facts are in the record and undisputed--the same kind of evidence that persuaded Judge Morris the AUMP is hierarchical and all property titled in the local churches is beneficially owned by the denomination. There is no reason to waste judicial resources on a trial, and in the meantime all the other AUMP local churches are being torn apart as members take sides in this internecine litigation.

This case is ripe for consideration by this Court now: The factual record is complete, all the procedural requirements have been satisfied, and judicial economy and social policy cry out for prompt resolution of this situation.

Respectfully submitted,

K. Kay Shearin

K. KAY SHEARIN
Attorney for Petitioners

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,
Defendants-Below,
Appellants,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,
Plaintiffs-Below,
Appellees.

No. 229, 1991

Submitted: 24 June 1991
Decided: 25 June 1991

Before CHRISTIE, Chief Justice,
MOORE & WALSH, Justices.

O R D E R

This 25th day of June, 1991, it appears that:

(1) Defendants-below, appellants, The Conference of African Union First Colored Methodist Protestant Church and Delbert L.

Jackson (the "Conference"), have petitioned this Court to accept an interlocutory appeal from an order of the Court of Chancery dated June 11, 1991 which refused to dissolve a preliminary injunction entered by the Court of Chancery on May 15, 1991 at the behest of the plaintiffs-below, appellees, Mother African Union First Colored Methodist Protestant Church, Morris A. Comegys, and Sara B. Gardner (the "Mother Church"). The parties are disputing their respective rights to control certain church properties located in Wilmington, Delaware.

(2) The Conference has filed a supplementary notice of appeal which reflects that on June 19, 1991, the Court of Chancery refused to certify the interlocutory appeal to this Court.

(3) In its ruling of May 15, 1991, the Court of Chancery granted a prelimin-

ary injunction which had the effect of permitting the disputing factions to continue using the church property until a final ruling on the claim of the Mother Church that title to church property resides with the trustees of the Mother Church and not the Conference. The Conference did not appeal the May 15, 1991 ruling, nor seek reargument as to that ruling. Its subsequent "Motion for Dissolution of Preliminary Injunction" filed on June 5, 1991 was simply an attempt to reargue the merits of the May 15 decision and resulted in the Chancery Court's order of June 11, 1991. In effect, the Conference now seeks an interlocutory review of the Court of Chancery's May 15, 1991 ruling although the time for seeking such review under Supreme Court Rule 42(d) has expired.

(4) Apart from the apparent untimeli-

ness of the present application, it is clear that neither the June 11, 1991 nor May 15, 1991 ruling of the Court of Chancery meet the criteria of Supreme Court Rule 42(b). Although the Conference suggests that the rulings of the Court of Chancery sustain the controverted jurisdiction of the trial court, the Court of Chancery's jurisdiction over this dispute is manifest.

NOW, THEREFORE, IT IS ORDERED that the petition for interlocutory appeal is REFUSED.

Refusal of the interlocutory appeal renders moot the Conference's "Motion for Expedited Scheduling" and the Mother Church's "Motion to Strike and/or Seal Part of the Record and for Sanctions for a Performance Deficiency."

BY THE COURT:

/s/ Joseph Walsh
Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

Civil Action No. 2960-53

Filed: 25 July 1955

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having considered the briefs filed by the parties upon a motion to dismiss the complaint made by the defendant on March 27, 1955, and having denied the motion, the above action came before the Court for trial on June 2, 1955. The Court, upon the entire record in the case, including testimony and oral argument,

makes the following findings of fact and conclusions of law.

I. Findings of Fact

1. African Union First Colored Methodist Protestant Church is a general church organization, or religious denomination, tracing its origin back to 1812, and having a Book of Discipline adopted by the denomination formulating and prescribing structure and relationship of subordination of member churches, or units, to the general religious organization.

2. One of the plaintiffs, viz., The Conference of African Union First Colored Methodist Protestant Church, a corporation organized under the laws of the State of Delaware, is the corporate embodiment of said general church organization. Another plaintiff, Richard Gross, is a member of St. Paul African Union First Colored Meth-

odist Protestant Church and has adhered to and continued to adhere to the Discipline and authority of the general church organization, or religious denomination. The third plaintiff, the Reverend Reese C. Scott, is president of the general church organization.

3. The defendant, St. Paul African Union First Colored Methodist Protestant Church, is organized as a corporation under laws in force in the District of Columbia, is a subordinate member church, or unit, of the said general church organization, or religious denomination, has subscribed and adhered to the Book of Discipline of said denomination, dedicated its property to the uses and purposes of said religious denomination, and for many years prior to June 15, 1953, received and employed pastors from said general church organization.

4. The property of the defendant corporation consists principally of a church building, with appropriate furniture and furnishings, situate at No. 326 I Street, Southeast, in Washington, District of Columbia.

5. On or about June 15, 1953, defendant severed "all connections" with the general church organization, the African Union First Colored Methodist Protestant Church, changed its name from "St. Paul African Union First Colored Methodist Protestant Church" to "St. Paul Methodist Church" and diverted said church property to the uses and purposes of the new and different "St. Paul Methodist Church." It also refused to permit the church property to be used by ministers of the general church organization.

II. Conclusions of Law

1. The Court has jurisdiction of this

action to enjoin the diversion of property, the legal title to which is held by a member church, or unit, of a general church organization, and which property had been dedicated to the uses and purposes of such general church organization, or denomination, to different, antagonistic or inconsistent uses and purposes.

2. The defendants, having diverted the property of St. Paul African Union First Colored Methodist Protestant Church to uses and purposes different from, antagonistic to or inconsistent with the uses and purposes of the general church organization known as African Union First Colored Methodist Protestant Church, have no right to such property.

/s/ J. W. Morris
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and REV. R. C. SCOTT, and RICHARD GROSS,
Plaintiffs,

v.

WALTER C. CLEAVER and ROBERTA HARPER, et al.,
Defendants.

Civil Action No. 2960-53

Filed: 25 July 1955

ORDER

Upon the basis of findings of fact and conclusions of law filed herewith, it is by the Court, this 25th day of July 1955,

Ordered:

1. That the defendants immediately cease to use the parcel of real property and the furniture and furnishings there situate at No. 326 I Street, Southeast, in Washington, District of Columbia, in any

manner inconsistent with or for any purposes other than the purposes of the religious denomination known as African Union First Colored Methodist Protestant Church.

2. That the defendants make only such use of the said property as is in conformity with the purposes of said religious denomination.

3. That the defendants pay the costs of this action.

/s/ J. W. Morris
Judge

Delaware Supreme Court Rules

RULE 41.

CERTIFICATION OF QUESTIONS OF LAW

(a) Who May Certify. Any state court and the United States District Court for the District of Delaware may, on motion or sua sponte, certify to this Court for decision a question of law arising in any case before it prior to the entry of final judgment if there is an important and urgent reason for an immediate determination of such question by this Court and the certifying court has not decided the question in the case.

(b) Requirements for Accepting a Certification. Certification will be accepted in the exercise of the discretion of the Court only where there exist important and urgent reasons for an immediate determination by this Court of the questions certified. A certification will not be accepted if facts material to the issue certified are in dispute. A certificate shall state with particularity the important and urgent reasons for an immediate determination by this Court of the question certified. Without limiting the Court's discretion to hear proceedings on certification, the following illustrate reasons for accepting certification:

(i) The question of law is of first instance in this State;

(ii) The decisions of the trial courts are conflicting upon the question of law;

(iii) The question of law relates to the constitutionality, construction or application of a statute of the State

which has not been, but should be, settled by the Court.

(c) Procedure for Certification. The procedure for certification shall be as follows:

(i) A judge of the certifying court shall sign and file with the clerk of that court a certification substantially in the form set forth in Official Form K;

(ii) The clerk of that court shall, within 5 days of the filing of such certification, file with the Clerk of this Court 6 certified copies of the certification and 6 true and correct copies of such of the following papers as may have been filed below:

(A) any Petition for Certification;

(B) any response to the Petition for Certification; and

(C) any stipulation of facts with respect to the Certification;

(iii) Upon the receipt of such copies, the Clerk of this Court shall forthwith docket the proceeding on certification in the same manner as other cases are docketed, shall deliver to each of the Justices 1 copy of the certification and any accompanying papers and shall send written notice to the parties of the filing of such proceeding;

(iv) After docketing and unless otherwise ordered, this Court shall thereupon and without further argument determine whether to accept or refuse the certification. If refused, a certified copy of the order shall be sent to the certifying court and a copy thereof sent to each counsel. If accepted, the proceeding on certification shall be considered to have been duly instituted, and the Clerk shall

send written notice thereof to the parties. The certification as filed shall constitute the record;

(v) From the date of acceptance of certification further proceedings shall be governed by these Rules. Briefs shall be filed in the order recommended by the certifying court in the certification, unless the Court, at the time of approving the certification, shall designate a different order. In any event, insofar as time for filing is concerned, the party or parties required to file the first brief shall be considered the appellant and the other party or parties shall be considered appellee. The caption for papers filed in this Court after acceptance of certification by this Court shall reflect such relationship among the parties.

RULE 42.

INTERLOCUTORY APPEALS

(a) Exercise of Jurisdiction. The Court's jurisdiction to hear and determine appeals in civil cases from interlocutory orders of a trial court, including a trial court acting as an intermediate appellate court in the review of a ruling, decision or order of a court or an administrative agency, shall be exercised in accordance with this rule as to certification and acceptance of interlocutory appeals.

(b) Criteria to be Applied in Determining Certification and Acceptance of Interlocutory Appeals. No interlocutory appeal will be certified by the trial court or accepted by this Court unless the order of the trial court determines a substantial issue, establishes a legal right and

meets 1 or more of the following criteria:

(i) Any of the criteria applicable to proceedings for certification of questions of law set forth in Rule 41; or

(ii) The interlocutory order has sustained the controverted jurisdiction of the trial court; or

(iii) An order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which had determined a substantial issue and established a legal right, and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or

(iv) The interlocutory order has vacated or opened a judgment of the trial court; or

(v) A review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice.

(c) Procedure for Certification of Interlocutory Appeals in the Trial Court. An application for certification of an interlocutory appeal shall be made in the first instance to the trial court in accordance with the following procedures:

(i) Such application shall be served and filed within 10 days of the entry of the order from which the appeal is sought;

(ii) An opposing party shall have 10 days (or such shorter time as the trial court shall in its discretion order, upon notice for good cause shown or upon the trial court's order sua sponte) after such service within which to serve and file a written response or, if the trial court so

directs, present an oral response in lieu of a written response;

(iii) Within 10 days after filing of the response or, if there is none, within 20 days after filing the application, the trial court shall enter an order certifying or refusing to certify the interlocutory appeal;

(iv) Such order shall be substantially in the form set forth in Official Form L, setting forth the basis for the certification and indicating which of the criteria set forth in paragraph (b) of this rule is applicable;

(v) A copy of the application and response referred to in subparagraphs (i) and (ii) of this paragraph shall, concurrently with service and filing, be delivered by the party serving and filing it to the judge of the trial court whose order is sought to be reviewed.

(d) Procedure for Acceptance of Interlocutory Appeals in the Supreme Court. No interlocutory order shall be reviewed by this Court unless the appeal therefrom has been accepted by this Court in accordance with the following procedure:

(i) The notice of appeal may be filed at any time after the filing of the application for certification in the trial court, except that it shall be the obligation of appellant to serve and file in this Court a notice of appeal of an interlocutory order within 30 days after the entry of the order from which the appeal is sought to be taken;

(ii) The notice of appeal and any cross-appeal shall comply with this rule, Rules 6 and 7 of this Court and with such version of Official Form M as shall be applicable to the situation;

(iii) If the notice of appeal is filed before action has been taken by the trial court on the application for certification, appellant shall file a supplementary notice of appeal within 10 days after the expiration of the time periods set forth in paragraph (c) of this rule.

(iv) The notice of appeal and the supplementary notice of appeal, if any, shall include a true and correct copy of such of the following papers as shall have been filed below:

(A) The application for certification;

(B) The interlocutory order from which the appeal is sought to be taken together with any opinion of the trial court with respect thereto;

(C) The written response, if any, to the application for certification, or the transcript, if and when available, of an oral response in lieu of a written response;

(D) The order, if any, of the trial court certifying or refusing to certify the interlocutory appeal and any opinion with respect thereto; and

(E) If no order has been entered by the trial court on the application for certification within 30 days of the entry of the interlocutory order, a separate certificate of appellant's counsel so stating shall be attached.

(v) Unless otherwise ordered, this Court shall thereupon and without further argument determine in its discretion whether to accept or refuse the interlocutory appeal. In exercising that discretion, this Court may consider all relevant factors, including the decision of the trial court whether to certify the

interlocutory appeal.

(vi) From the date of the acceptance of the interlocutory appeal, further proceedings shall be governed by these Rules, except:

(A) The record shall not, in the first instance, be transmitted to the Clerk of this Court. Instead, the respective appendices of the parties, or a joint appendix if one is agreed upon, shall contain such record materials as each party believes relevant to the determination of the issue on appeal. The Court may, at its option, thereafter direct the clerk of the trial court to transmit all of the record, or such portions as the Court deems relevant to consideration of the interlocutory appeal.

(B) The time schedule for the filing of briefs and appendices, pursuant to Rule 15, shall commence upon the third day following the acceptance of the interlocutory appeal.

(vii) If the appeal is refused, a certified copy of the order shall be sent to the trial court and a copy thereof to each counsel.

(e) Continuation of Other Proceedings in the Trial Court. The pendency of proceedings under this rule shall not operate as an automatic stay. Applications for stays shall be processed in the same manner as stays pending appeal under Rule 32.

(f) Failure to Seek or Obtain Review of Interlocutory Order. The failure to seek review of or the refusal of the Court to accept an appeal from an interlocutory order under this rule shall not bar a party from seeking review of such interlocutory order on appeal from the final order, judgment or decree.

Supreme Court, U.S.
FILED
SEP 17 1991
OFFICE OF THE CLERK

(2)

No. 91-291

In The

Supreme Court of the United States

October Term, 1991

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Thomas Stephen Neuberger
Counsel of Record
Paulette Sullivan Moore
Thomas S. Neuberger, P.A.
200 West Ninth St., Suite 702
Wilmington, Delaware 19801
(302) 655-0582
Attorneys for Respondents

September 17, 1991

Balmar Legal Publishing Division, Washington, D.C. 20005 (202) 659-3610

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. THE COURT BELOW CORRECTLY APPLIED THE NEUTRAL PRINCIPLES OF LAW TEST TO A CHURCH PROPERTY DISPUTE.	5
II. CERTIORARI SHOULD NOT BE GRANTED BECAUSE THERE IS NO FINAL JUDGMENT BELOW.	9
III. THE PETITION CONTAINS PERCEIVED MISSTATEMENTS OF FACT AND LAW.	12
CONCLUSION	15
APPENDIX	A-1

TABLE OF AUTHORITIES

A. CASES

Bjorkman v. Protestant Episcopal Church, 759 S.W.2d 583 (Ky. 1988) 7

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971) 8

Board of Commissioners of Tippecanoe County v. Lucas, 93 U.S. 108 (1876) 9

Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C. Cir. 1956) 8

Cox Broadcasting Corp. v. Cohen, 420 U.S. 469 (1975) 10, 11

Foltz v. Pullman, Inc., 319 A.2d 38 (Del. 1974) 8

Georgia Ry. & Power Co. v. Town of Decatur, 262 U.S. 432 (1923) 9

Gibbons v. Ogden, 6 Wheat. (19 U.S.) 448 (1821) 9

Gibson v. Trustees of Pencader Presbyterian Church, 10 A.2d 332 (Del. Ch. 1939), affirmed, 22 A.2d 782 (Del. 1941) 7

Jones v. Wolf, 443 U.S. 595 (1979) 5, 6, 12, 13

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) 7

Keegan v. University of Delaware, 349 A.2d 14 (Del. 1975), cert. denied 424 U.S. 934 (1976) 7

Local No. 438 Construction & General Laborers' Union v. Curry, 371 U.S. 542 (1963) 9

Minnick v. California Department of Corrections, 452 U.S. 105 (1981) 11, 12

Montgomery Bldg. & Construction Trades Council v. Ledbetter Erection Co., 344 U.S. 178 (1952) 9, 10

Moses v. The Mayor, 15 Wall. (82 U.S.) 387 (1872) .. 9

North Carolina R. Co. v. Story, 268 U.S. 288 (1925) .. 9

Pennsylvania Manufacturers Association Insurance Co. v. Home Insurance Company, 584 A.2d 1209 (Del. 1990) 8

Reddall v. Bryan, 24 How. (65 U.S.) 420 (1860) ... 9

Trustees of Delaware Annual Conference v. Ennis, 29 A.2d 374 (Del. Ch. 1942) 7

Trustees of Pencader Presbyterian Church v. Gibson, 22 A.2d 782 (Del. 1941) 7

Verden v. Coleman, 18 How. (59 U.S.) 86 (1855) .. 9

Watson v. Jones, 80 U.S. 679 (1871) 7

Younger v. Harris, 401 U.S. 37 (1971) 3

B. STATUTES

U.S. Constitution, First Amendment ..... *passim*

28 U.S.C. sec. 1257(a) 2, 9

Supreme Court Rule 10.1(b) 2, 8

Supreme Court Rule 15.1 12

F.R.Civ.P. 11 3

27 Del. C. sec. 105 (1989) 14

C. OTHER AUTHORITIES

Note, *"The Finality Rule For Supreme Court Review Of State Court Orders,"* 91 **Harv. L.Rev.** 1004 (1978) 10, 11

No. 91-291

In The

Supreme Court of the United States

October Term, 1991

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

OPINIONS BELOW

The Temporary Restraining Order issued on April 19th, 1991, is not reported and is printed in the Appendix, p. A-1.

The Memorandum Opinion of the Court of Chancery is not officially reported and is printed in the Appendix, p. A-6.

The June 25th, 1991, Order of the Supreme Court of the State of Delaware is set out in Petitioners' Appendix, p. A-1.

The May 10th, 1991, Order of the United States District Court for the District of Delaware is not reported and is printed in the Appendix, p. A-3.

The oral ruling of The Honorable Jane Roth of the United States District Court for the District of Delaware, dated May 10th, 1991, is set out in the Appendix, p. A-5.

The June 11, 1991, three-page ruling of the Court of Chancery, denying Motions to Dismiss and to Dissolve the Preliminary Injunction, is printed in the Petitioners' Appendix, p. A-4a.

JURISDICTION

The allegation of jurisdiction is disputed. Jurisdiction does not exist under 28 U.S.C. sec. 1257(a) to pursue an interlocutory appeal from the grant of a preliminary injunction. Nor should discretion be exercised pursuant to Rule 10.1(b) since no decision has been made on a federal question which in any way conflicts with a decision of this or any other court.

STATEMENT OF THE CASE

The underlying action is one for injunctive relief to remedy the wrongful exclusion from its church building and other property of the entire congregation of a 178 year old church. Petitioners have seized property of a Delaware religious corporation and they also have prevented the use of that property for religious worship and other religious purposes.

Contemporaneous with the filing of the Verified Complaint on April 18, 1991, respondents filed a motion for a temporary restraining order. After a lengthy hearing, and upon the posting of a nominal bond, the Court entered a temporary restraining order on April 19th, A-1, and orally ruled from the bench.

On May 6th the Court held another full hearing on respondents' motion for a preliminary injunction. The temporary restraining order then was extended until the Court ruled on May 15th, when it issued a Memorandum Opinion and a preliminary injunction. A-6.

That decision from the respected Delaware Court of Chancery analyzed in detail both the factual and legal issues involved

in this case. The facts are set out in the opinion and need not be repeated here. Appendix, A-6-24. On the legal issues, the Delaware Court applied the "neutral principles of law" standard to avoid any infringement of First Amendment freedoms. A-16. Pending trial, the Court then issued preliminary injunctive relief and struck "an appropriate interim balance between the legitimate interests of both sides." A-23.

Prior to the Court's ruling, agents of the petitioners filed a civil action, in the United States District Court for the District of Delaware, seeking effectively to enjoin the state court proceedings below. The District Court, by the Honorable Jane R. Roth, denied a motion for a temporary restraining order in light of the obvious violation of the terms of the order issued by the Vice Chancellor. A-5. The Court confirmed this oral ruling in a written order. A-3.[1]

Prior to the hearing in federal court, two lengthy hearings had been held in the Court of Chancery. Extensive deposition testimony also had been submitted, together with legal briefs.

Under the *Younger v. Harris*, 401 U.S. 37 (1971), doctrine, Judge Roth denied the motion for a temporary restraining order because it was an attempt to interfere with an ongoing state court proceeding. She also suggested that sanctions might be appropriate, under F.R.Civ.P. 11, against counsel who had filed the action in federal court.[2]

Back in the state court, Petitioners' Motions to Dismiss and to Dissolve the Preliminary Injunction were denied in a three-page ruling dated June 11, 1991. Petitioners' Appendix, A-4a. Therein the Court pointed out that the petitioners had "never formally advanced or supported an argument that the plaintiffs'

---

[1] Judge Roth has since been elevated to the United States Court of Appeals for the Third Circuit.

[2] Because of the elevation of Judge Roth to the Third Circuit that case is presently awaiting reassignment. In that case a motion to dismiss and to impose sanctions has been briefed and is awaiting a decision.

complaint fails to state a legally valid claim for relief." *Id.* A-4b.

On June 17, 1991, petitioners sought an untimely interlocutory appeal to the Delaware Supreme Court. A transcribed hearing in Chancery Court was held on this application and on June 19th it was denied orally. The Court therein also ruled that no jurisdictional issue ever had been raised by the petitioners.

An appeal of these decisions was taken to the Delaware Supreme Court. Respondents placed a 67 page brief before the Court which contained over 20 pages of analysis of the "neutral principles of law" standard which had been applied in this case. The Delaware Supreme Court then declined to accept an interlocutory appeal from the grant of a preliminary injunction and noted that a final ruling on the title to real property remained to be determined at trial. Petitioners' Appendix, A-3. The Court also observed that the application for an interlocutory appeal was untimely since it was filed too late. *Id.*

SUMMARY OF ARGUMENT

There is no conflict with any decision of this or any other Court since the Court below correctly applied a neutral principles of law analysis. Under that doctrine a church property dispute can be resolved by examination of deeds, corporate charters, the law of trusts and other neutral documents, such as those relied upon below.

Jurisdiction does not exist in this Court because: (1) the preliminary injunction is not a final judgment and no exception to the finality rule applies to this case, (2) the interlocutory appeal was untimely because it was filed too late, and (3) jurisdiction does not exist from the denial of a motion to dismiss.

This case is not an appropriate vehicle to revisit the neutral principles of law method of resolving church property disputes because there are numerous misstatements of both fact and law

in the Petition. These misstatements create conflicts over the record before this Court.

ARGUMENT

I. THE COURT BELOW CORRECTLY APPLIED THE NEUTRAL PRINCIPLES OF LAW TEST TO A CHURCH PROPERTY DISPUTE.

The Delaware Court of Chancery correctly relied upon the rule of law set forth in *Jones v. Wolf*, 443 U.S. 595, 603 (1979), to avoid First Amendment difficulties in this case. A-16. In *Jones* a Presbyterian church dispute arose in an admittedly hierarchical organization. *Id.* at 597. The question presented was whether the First Amendment *required* the courts to defer the resolution of a church property dispute to an authoritative tribunal of a hierarchical church or whether a State may resolve such a dispute on the basis of neutral principles of law. *Id.* This Court then held that a State may constitutionally adopt neutral principles of law as the means of resolving a church property dispute, even in a hierarchical church, and that it need not remit the parties to self-help. *Id.* at 604.

On the facts, the denomination in that case preexisted the local church which had been incorporated in 1915. *Id.* at 597. But record title to realty resided in the local corporation, and funds for its purchase came from the local congregation. *Id.* Then, at a congregational meeting attended by a quorum of duly enrolled members, 164 voted to secede and 94 opposed. The majority ruled and the minority filed a state court class action. *Id.* at 598.

In reviewing Georgia law, this Court noted that in one case the Georgia Supreme Court, applying neutral principles of law, looked at two deeds, state statutes dealing with implied trusts, and the book of church order. *Id.* at 600.[3] In another case it

---

[3] The Chancery Court examined similar documents in the present case.

looked at deeds, the corporate charter, state statutes dealing with implied trusts and the church constitution. In the instant case the Georgia court looked at deeds, state statutes dealing with implied trusts, the corporate charter and the constitution of the denomination and still failed to find any language of trust for the benefit of a denomination. *Id.* at 602.

In stating the law, this Court observed that the State has an obvious and legitimate interest in providing a forum for the peaceful resolution of property disputes. *Id.* at 603. The State, however, must be careful to avoid First Amendment violations, such as analyzing religious doctrine and practice. *Id.* Since neutral principles of law relies on objective well established concepts of trust and property law, this Court held that its use is consistent with the First Amendment and can be used by state courts to resolve church property disputes. *Id.* at 603. Since this is what the court below did, there was no error in its decision to apply this doctrine as it is presently defined. A-16.

The basic flaw in the petition for certiorari is that it relies upon legal authority decided 35 or more years ago before this Court developed its neutral principles of law doctrine and related standards. For example, the beauty of neutral principles of law is that a trial court does not have to resolve any factual dispute, if one exists, as to whether a denomination is hierarchical or not. In the present case respondents vigorously dispute that the Conference is hierarchical. They even have offered expert testimony as to the intentions of the founder of the corporation, Peter Spencer, who sought to form a congregational church. The deposition testimony of petitioner Jackson also established that the entire Conference consists of less than 10,000 members. To contrast this with the hierarchical churches on which some cases are based, raises serious doubts as to whether the Conference is a hierarchical organization. The churches in those cases have existed for centuries, since the Reformation in the 1500's, the split between East and West in 1054, or even from

the first century, A.D. These churches have well developed bodies of appeal, case law, tribunals, etc. Respondents dispute whether the Conference fits any of these norms. But the courts will not have to decide this dispute because of the application of the neutral principles of law doctrine. The petitioners instead would have the courts enmesh themselves in a determination of hierarchical versus congregational governance. This the Delaware courts are not required to do and they have chosen not to enter this thicket.

It does not appear that the Delaware Supreme Court has had a recent direct opportunity to apply neutral principles of law. Undoubtedly it would do so because the Delaware Supreme Court has always followed and adopted First Amendment Religion Clause doctrine as promulgated by the United States Supreme Court. *See e.g., Keegan v. University of Delaware*, 349 A.2d 14 (Del. 1975), cert. denied 424 U.S. 934 (1976) (free exercise and establishment clause principles applied). Indeed, in many of their earlier decisions the Delaware courts have in effect followed neutral principles of law by looking to the first category found in *Watson v. Jones*, 80 U.S. 679, 722-23 (1871), that of deeds, trusts, etc. *See e.g., Trustees of Pencader Presbyterian Church v. Gibson*, 22 A.2d 782, 789 (Del. 1941); *Trustees of Delaware Annual Conference v. Ennis*, 29 A.2d 374, 377 (Del. Ch. 1942); *Gibson v. Trustees of Pencader Presbyterian Church*, 10 A.2d 332, 337-38 (Del. Ch. 1939), affirmed, 22 A.2d 782 (Del. 1941).[4]

More specifically, in reply to the argument that respondents "lacked standing to bring the suit," Petition at 17, this is plainly wrong since this Court decided this issue in *Kedroff v. St.*

---

[4] Other State Supreme Courts have followed the suggestion of the United States Supreme Court and have adopted neutral principles of law as the governing standard so that a forum can be provided to resolve church property disputes. Otherwise the parties are left to self-help which is not a socially desirable consequence. *See e.g., Bjorkman v. Protestant Episcopal Church*, 759 S.W.2d 583, 585-86 (Ky. 1988).

Nicholas Cathedral, 344 U.S. 94, 113 (1952). The Court there observed that a member of a church has standing to claim a beneficial interest in church property and can sue to obtain proper use of the property.

Defendants' reliance on *Cleaver v. Conference of African Union First Colored Methodist Protestant Church*, 240 F.2d 57 (D.C. Cir. 1956), and the unreported proceedings of the trial court, is misplaced. Firstly, concerning the law which was applied, *Cleaver* was not decided on the application of the neutral principles of law doctrine but by deference to an allegedly hierarchical organization. Secondly, on the facts, the case went to a full trial but the record is unknown. Moreover, nothing in the record before that court apparently bears any similarity to the factual record presently before this Court. A comparison of the detailed preliminary factual findings of the Court of Chancery below with the extremely brief findings in *Cleaver* establish that the cases are not factually the same. Nor has a trial record yet been developed in the present case. Lastly, again on the law, if by somehow citing this decision the petitioners are relying upon principles of res judicata or collateral estoppel, they have made no showing that the requirements for the application of either doctrine have been met. There has been no showing that the same parties or their privies are before this Court. *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971); *Pennsylvania Manufacturers Association Insurance Co. v. Home Insurance Company*, 584 A.2d 1209 (Del. 1990); *Foltz v. Pullman, Inc.*, 319 A.2d 38 (Del. 1974).

Consequently, a grant of certiorari is improper under Rule 10.1(b) since there is no conflict with any other pertinent decisions on a federal question. Instead, the trial court has applied the governing law.

II. CERTIORARI SHOULD NOT BE GRANTED BECAUSE THERE IS NO FINAL JUDGMENT BELOW.

As was explained by the Chancery Court, at a late date the petitioners filed a motion to dismiss but, since they failed to brief the issue in any fashion, the motion was denied. Petitioners' Appendix, A-4b. An appeal cannot be taken to this Court, under 28 U.S.C. sec. 1257(a), from a judgment denying a dismissal. Such a judgment is not a final judgment, even if the question involves the jurisdiction of a state court. *North Carolina R. Co. v. Story*, 268 U.S. 288, 291 (1925); *Board of Commissioners of Tippecanoe County v. Lucas*, 93 U.S. 108, 113-114 (1876).

The Petitioners also sought to file an interlocutory appeal from this denial and from the grant of a preliminary injunction. Unfortunately, the initiation of that appeal was untimely under local procedural rules. Petitioners' Appendix A-3.

But, even if the appeal was timely, Congress has not enacted interlocutory review of the grant or denial of a preliminary injunction in a state court. Such interlocutory injunction rulings are not final and are normally not appealable in this court. *Montgomery Bldg. & Construction Trades Council v. Ledbetter Erection Co.*, 344 U.S. 178, 179 (1952), explained in *Local No. 438 Construction & General Laborers' Union v. Curry*, 371 U.S. 542, 552 (1963); *Georgia Ry. & Power Co. v. Town of Decatur*, 262 U.S. 432 (1923); *Moses v. The Mayor*, 15 Wall. (82 U.S.) 387, 390 (1872); *Reddall v. Bryan*, 24 How. (65 U.S.) 420 (1860); *Verden v. Coleman*, 18 How. (59 U.S.) 86 (1855); *Gibbons v. Ogden*, 6 Wheat. (19 U.S.) 448 (1821). In *Montgomery Bldg. & Construction Trades Council, supra*, at 180, this Court noted that from the earliest days it has refused to accept jurisdiction of interlocutory appeals from state court preliminary injunctions. In *Local No. 438, supra*, at 552, the Court observed that this rule is both "salutary and long-standing." Because of judicial development of the body of federal

labor law, the result in this latter case was different from that in *Montgomery Bldg. & Construction Trades Council, supra*. But no such recent development in the law relating to church property disputes creates an exception in the present case to the rule barring appeal from the grant of a preliminary injunction.

The same result is dictated applying the four exceptions to the finality rule found in *Cox Broadcasting Corp. v. Cohen*, 420 U.S. 469 (1975). There the Court examined the very few exceptions to the finality rule. *See generally, Note, "The Finality Rule For Supreme Court Review Of State Court Orders,"* 91 **Harv. L.Rev.** 1004 (1978). "In the first category are those cases in which there are further proceedings-even entire trials-yet to occur in the state courts but where for one reason or another the federal issue is conclusive or the outcome of further proceedings preordained." 420 U.S. at 479. In such cases "the case is for all practical purposes concluded" and the judgment is final. *Id.* But nothing has been conclusively determined in the present case. The Chancery Court has granted respondents limited use of the property at issue in order to maintain the status quo. But the Court made it clear that it was not deciding any final property rights. Those rights remain to be determined at trial, together with issues relating to who governs the corporations involved. A-23-24, 16. Consequently, no federal issue has been conclusively determined or the outcome of any trial preordained.

The second exception consists of cases "in which the federal issue . . . will survive and require decision regardless of the outcome of future state court proceedings." *Id.* at 479-80. This exception does not apply because there is no guarantee that the alleged federal issue asserted by the petitioners will even survive and require a decision regardless of the outcome of the trial. The petitioners simply could win their trial. Then there will be no federal issue for them to present.[5]

---

[5] The petitioners are in effect seeking an advisory opinion from this Court on an issue that may never present itself.

The third category involves cases "where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Id.* at 481. In such a case, if the petitioners were to lose on the merits, governing state law would not permit them to present a federal claim for review by a higher court. This is not the case herein. The petitioners, if they lose a trial on the merits, will have plenary review of any claim that governing First Amendment law was violated.

The last exception permits interlocutory review only when (a) "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action," *id.* at 482-83, *and* (b) failure to consider the state court decision immediately "might seriously erode federal policy." *Id.* at 483. The present case does not fall within this exception. *See, Note, supra*, at 1023-26. Quite simply, there has been no erosion of federal policy by the proceedings below. In *Jones v. Wolf, supra,* this Court directed that state courts may apply the neutral principles of law standard to decide church property disputes. The proceedings to date have done nothing but apply neutral principles of law to maintain the status quo. There has been no showing that neutral principles of law will not be applied in the trial in this case, so no federal policy is being eroded.

Consequently, review cannot be had in this Court because (1) jurisdiction does not exist from the denial of a motion to dismiss, (2) the interlocutory appeal was filed several days too late and was untimely, and (3) in the particular circumstances of this case, the preliminary injunction is not a final judgment. In *Minnick v. California Department of Corrections*, 452 U.S. 105 (1981), this Court noted that often times a judgment is not final because "we are not persuaded that the outcome of further proceedings in the trial court can be characterized as 'certain'

or that those proceedings will not have a significant effect on the federal constitutional issues presented by the certiorari petition." *Id.* at 120. In a case full of "ambiguities in the record" and presenting issues in a highly abstract form, *id.* at 123, the Court refused to grant review but remitted the case to full and complete development of the record. *Id.* at 127. Similarly, the outcome of the trial below is not "certain" and the development of the record will have a significant effect on the highly abstract and theoretical legal issues which the petitioners are attempting to present in this Court. The petition thus should be denied.

III. THE PETITION CONTAINS PERCEIVED MISSTATEMENTS OF FACT AND LAW.

Rule 15.1 requires counsel to identify perceived misstatements of law or fact found in the petition. Such perceived misstatements are numerous.

(1) The ruling below is not in direct conflict with this Court's prior church property decisions. Petition at 3. Instead the ruling applies the rule of *Jones v. Wolf, supra*, and is based on application of the neutral principles of law doctrine. The Court carefully avoided all potential First Amendment entanglements. A-16, 20 n.11.

(2) There is absolutely no record support for the defamatory material about an alleged affair by one member of the Board of Trustees. These allegations were the subject of a hearing before the Court on June 19th, 1991. The charge was alleged to be scandalous, defamatory per se, and designed for no other purpose but to embarrass, threaten and to intimidate parties in litigation. On questioning by the Court counsel admitted "there are not specific facts in the record that support all of the allegations." Transcript at 10.

Because of the nature of this material, the Court ordered that the allegation be sealed and stated -

> It is admitted that the alleged adultery that is discussed in paragraphs 5 and 6 of the application is not supported by the record. Based on my knowledge of the case, those facts are not related to any substantive issue involved in this case. Nor is it necessary by any legal theory of which I am aware pertaining to Supreme Court Rule 42 to bring up these facts in an application for certification of an interlocutory appeal, even if those facts were supported by evidence in the record.
>
> Therefore, I conclude that it was totally improper to include those facts in an application of this kind, and that will be the basis for sealing this application. Transcript at 13-14.

(3) It is incorrect to claim that the federal question presented in the Petition was raised in the brief filed at the TRO hearing. Petition at 16. The question now presented is diametrically opposite to that presented at the TRO hearing. Petitioners in that brief argued that *Jones v. Wolf* applied "and under the neutral-principles analysis ownership of the disputed property turns on whether there is an express trust in favor of the general church." Defendants' Answering Brief In Opposition To Plaintiffs' Motion For A Temporary Restraining Order, at 5. The question now presented seeks to ignore the neutral-principles analysis permitted in *Jones v. Wolf, supra*, and which Petitioners invited, and instead argues that a per se rule of hierarchical church ownership should be imposed. This is incorrect as a matter of law. It also misstates the fact that the petitioners now have changed their legal theory.

(4) It is incorrect to argue that there is a due process issue in this case which was presented to the courts below. Petition at 24. At least three hearings were held before the Court of Chancery, the matter was reviewed by a panel of the Delaware

Supreme Court and by a distinguished U.S. District Court judge. More than due process was given.

(5) There is no record support for the contention that "[n]umerous popular and scholarly publications, several of them in evidence in the Chancery Court, show that" the corporate charter involved is that of the denomination. Petition at 6. No popular or scholarly publication in evidence supports this proposition.

(6) The allegation that there was no quorum for the membership meeting below is an incorrect statement of the facts and law. Petition at 14. The only quorum requirement found in the Delaware law relating to religious societies and corporations requires that a vote be taken "by a plurality of votes of the members present." *See* 27 *Del. C.* sec. 105 (1989). By a margin of almost 7 to 1, a plurality of members present endorsed the actions below.

(7) It is incorrect to state that the court below "chose not to address the First Amendment issue." Petition at 17. The Memorandum Opinion explicitly chose to apply the neutral principles of law standard. A-16.

(8) There is no record support for the contention that other church congregations have undertaken similar legal action and that the alleged denomination is being torn apart by its members. Petition at 21, 31. This is an appeal to emotion which is without any record basis.

(9) Nor is there record support for the contention that the alleged denomination is hierarchical or even has 40 churches. Petition at 22, 7. Plaintiffs have vigorously disputed that an alleged denomination, consisting of less than 10,000 members meets the historical and factual requirements for a hierarchical denomination.

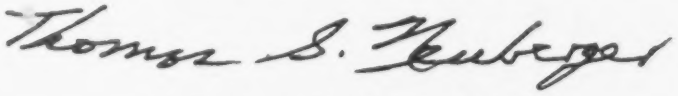
(10) Lastly, there is no legal support for the contention that the decision of the Chancery Court below is in direct conflict

with earlier Chancery Court decisions. Petition at 30. No legal authority is cited in support of this claim. Instead, the decision is consistent with the neutral principles of law doctrine and any earlier Delaware decision.

CONCLUSION

For the above stated reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



Thomas Stephen Neuberger
Counsel of Record
Paulette Sullivan Moore
Thomas S. Neuberger, P.A.
200 West Ninth St., Suite 702
Wilmington, Delaware 19801
(302) 655-0582
Attorneys for Respondents

APPENDIX

C. A. No. 12055

IN THE COURT OF CHANCERY
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MORRIS A. COMEGYS and **SARA B. GARDNER,**
individually and on behalf of all others similarly situated,
Plaintiffs,

v.

DELBERT L. JACKSON,
Defendant.

TEMPORARY RESTRAINING ORDER

This 19th day of April, 1991, upon presentation of plaintiffs' verified complaint and documents in support thereof, and it appearing that the defendant was given notice of this application for a temporary restraining order, and the Court having considered the record before it including the pleadings, affidavits, documents, briefs, and arguments of all parties, and it further appearing that if the defendant is not restrained plaintiffs will be irreparably injured because they will be denied their freedom to worship God at a place of their choosing;

NOW, THEREFORE, IT IS ORDERED THAT:

(a) The defendant, and his agents, employees, officers, successors, assigns, and all others acting in concert with him are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of The Church facility located at Ninth and Franklin Streets, Wilmington, Delaware, by the duly elected trustees of the Mother African Union First Colored Methodist Protestant Church or by its members during the following times, as represented by plaintiffs in this action:

(1) Sunday from 9:00 A.M. to 4:00 P.M.
(2) Wednesday from 5:00 P.M. to 10:00 P.M.
(3) Thursday from 5:00 P.M. to 10:00 P.M.
(4) Friday from 7:00 P.M. to 9:00 P.M.
(5) Saturday, April 27, 1991, from 6:00 A.M. to 11:00 A.M.

(b) The defendant may maintain security guards posted at the church but shall turn over a set of keys to plaintiffs' counsel for use by the plaintiffs who shall not make a copy of these keys.

(c) The defendant, and his agents, employees, officers, successors, assigns, and all others acting in concert with him shall permit access for the conduct of funerals and weddings as requested by the plaintiffs.

(d) The defendant shall provide a key to the day care, the key shall not be duplicated and shall be used to provide access to the facility (including the kitchen), for use by the existing daycare during its normal hours of operation.

(e) Plaintiffs shall post a bond in the amount of ONE THOUSAND DOLLARS ($1,000.00) without surety as security for the payment of such costs and expenses as may be incurred or suffered by the defendant if it should be determined that he has been wrongfully enjoined or restrained.

(f) This order shall become effective upon execution provided that the above mentioned bond without surety is filed with the Court no later than 5:00 P.M. on Saturday, April 20th, 1991.

(g) A hearing on plaintiffs' application for a preliminary injunction shall be held on May 6th, 1991, at 2:00 P.M.

/s/ JACK B. JACOBS
VICE-CHANCELLOR

C. A. No. 91-272-JRR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ST. PAUL'S AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH OF WASHINGTON, D.C.,

Plaintiff,

v.

MORRIS A. COMEGYS, et al.,

Defendants.

ORDER

The Court having conducted a hearing on May 10, 1991, with K. Kay Shearin, Esquire, representing plaintiff, and Thomas S. Neuberger, Esquire and Paulette Sullivan Moore, Esquire, representing defendants,

IT IS ORDERED THAT:

1. For the reasons stated at the hearing, Plaintiff's Motion for a Temporary Restraining Order is hereby denied.

2. The Court admonishes plaintiff to carefully consider whether it is covered by the temporary restraining order issued by the Court of Chancery of the State of Delaware on April 19, 1991, in *Morris A. Comegys, et al. v. Delbert L. Jackson*, C.A. No. 12055 (Del Ch. 1991), which binds Defendant Delbert L. Jackson "and his agents, employees, officers, successors, assigns, and all others acting in concert with him." The Court will closely review this matter both on the issue of whether abstention is appropriate under *Younger v. Harris*, 401 U.S. 37 (1971) and *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), and on the

question of whether Rule 11 sanctions may be appropriate as suggested by defendants.

/s/ JANE R. ROTH
UNITED STATES
DISTRICT JUDGE

Date: May 10, 1991

The following is an excerpt from a hearing held 5/10/91 before Judge Roth in Civil Action 91-272.

THE COURT: Okay.

Well, I am prepared to rule on the motion for a temporary restraining order, because I do not see that I am capable of coming in, under *Younger* or under *Pennzoil*, and issuing an order which has the impact which is what you have just stated on the record is what you are asking.

The four standards for issuing a temporary restraining order are as Mr. Neuberger stated. I see many areas which would militate against my issuing a temporary restraining order.

First of all is the abstention, that I should not step in and issue an order which would negate either the temporary restraining order or the preliminary injunction of the Court of Chancery.

There has not been a sufficient showing that the plaintiffs here can't get their rights protected in the state court, either through intervention or appeal. And I think it is not appropriate for this Court, under the circumstances and the facts of record in this case, to step in and issue a temporary restraining order which would have the effect that the plaintiffs here are asking for.

I am also concerned by the equities of the situation in that, as Ms. Shearin has described, the role of St. Paul's Church in the Conference, and as I reviewed the language of the temporary restraining order issued by the Court of Chancery, I would find that it would seem very likely that St. Paul's Church would fall into the category of all others acting in concert with Bishop Jackson. Therefore, I think there is a strong argument to be made that the plaintiffs here are in contempt of the temporary restraining order issued by the Court of Chancery. That, in the area of equities, would also be a persuasive factor in not issuing the temporary restraining order out of this court.

So for the reasons I have stated, I am going to deny the motion for a temporary restraining order.

Civil Action No. 12055

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware Corporation,
MORRIS A. COMEGYS and **SARA B. GARDNER,**
individually and on behalf of all others similarly situated,
Plaintiffs,

v.

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,
a Delaware corporation,
and **DELBERT L. JACKSON,**
Defendants.

MEMORANDUM OPINION

Date Submitted: May 7, 1991
Date Decided: May 15, 1991

Paulette S. Moore, Esquire, of DOROSHOW, PASQUALE & LINARDUCCI, Wilmington, Delaware; Thomas S. Neuberger, Esquire, Wilmington, Delaware; Attorneys for Plaintiffs.

K. Kay Shearin, Esquire, Wilmington, Delaware; Attorney for Defendants.

JACOBS, Vice Chancellor

At issue on this motion for a preliminary injunction are the ownership rights to a church building and other properties that until recently were titled in the name of Mother African Union First Colored Methodist Protestant Church ("Mother Church"), a Delaware corporation. The competing claimants to those properties are the Mother Church and its Trustees, who are the plaintiffs; and The Conference of African Union First Colored Methodist Protestant Church (the "Conference"), a Delaware corporation, and its Bishop, Delbert L. Jackson ("Bishop Jackson"), who are the defendants.[1]

Plaintiffs filed this lawsuit on April 18, 1991 to remedy certain actions taken by or at the direction of Bishop Jackson. On April 9, 1991, a majority of those persons present at a special congregational meeting voted to disaffiliate the Mother Church from the Conference.[2] The complaint alleges that, in response, Bishop Jackson wrongfully caused the locks to be changed on the church building, posted security guards at the church building, and barred members of the Mother Church from using the building as a place of worship. The plaintiffs claim that neither Bishop Jackson nor the Conference have any ownership rights in, or right to control, the properties at issue, and that such rights reside solely in the Mother Church and its Trustees. The plaintiffs ask this Court to so declare.

The complaint also alleges that on April 6, 1991, after Bishop Jackson learned of the scheduled April 9, 1991 special meeting to consider seceding from the Conference, he caused

---

[1] The original parties were the Trustees and Bishop Jackson. As a result of a suggestion made by the Court, the Mother Church and the Conference were later joined as parties plaintiff and defendant, respectively, to enable the Court to afford effective relief.

[2] Unfortunately the terminology is somewhat confusing, because the "Conference" is used to refer not only to the corporate defendant of which defendant Jackson is the Bishop, but also to describe the larger religious association with which certain local churches, including the Mother Church, were affiliated. See Part I, *infra*, of this Question.

deeds transferring the Mother Church's properties to the Conference to be executed and recorded. The plaintiffs further allege that those deeds were not authorized or executed by the plaintiff Trustees, and on their face are fraudulent and a cloud on the Mother Church's title. As a consequence, the plaintiffs seeks an order removing all existing clouds on the title to the Mother Church's properties, enjoining the defendants from further clouding the title, and from otherwise interfering with the plaintiffs' quiet title, use, and enjoyment of those properties.

At the time they filed their complaint, the plaintiffs also moved for a temporary restraining order and a preliminary injunction restoring their (and their congregation's) access to the church properties *pendente lite*. On April 19, 1991, after a hearing, the Court entered a temporary restraining order prohibiting the defendants from "interfering with the quiet title, operation, use, enjoyment and governance of the [Mother] Church facilities located at Ninth and Franklin Streets, Wilmington, Delaware by [the Conference]" during the particular days of the week and the times specified in that Order.

On May 6, 1991, after expedited discovery and briefing, a hearing was held on the plaintiffs' motion for a preliminary injunction. Supplementary memoranda were submitted on May 7, 1991.[3] This is the decision of the Court on that motion.

I.

The core issue on this motion is which corporation – the Mother Church or the Conference – owns and is legally entitled to control the contested properties. That issue turns importantly on two subsidiary questions: (1) which corporation holds legal title to those properties, and (2) if the Mother Church holds title,

[3] Thereafter, on May 8, 1991, the defendants submitted a large box of documents to the Court, unsolicited and with no cover letter explaining their relevance. The Court attempted to examine those materials, but has found nothing that sheds further light on the issues pertinent to this motion.

whether it has ceded to the Conference its ownership rights or its power to control the use and disposition of those properties. The facts now recited pertain to those questions. Except where noted, those facts are based upon uncontested documents, and are undisputed.

The Mother Church was incorporated as the "African Union Church" on September 18, 1813. (Jackson Dep., Exh. 9; A-150).[4] Article 2nd of that corporation's 1813 certificate of incorporation reads as follows:

> The said Corporation shall have, hold, possess and enjoy the temporal property which they have at this time or shall hereafter acquire. In trust for the Religious uses of the Ministers and Preachers of the said "Union Church" for them and their African Brethren and their descendants of African Race, and also for the Ministers and Teachers of the African Brethren duly licensed and ordained according to the Discipline adopted by this corporation.

Article 4th of that certificate delineates specific requirements that must be satisfied before any property of the corporation can be transferred or encumbered:

> The said Trustees nor their Successors shall not by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation; nor Mortgage nor Pledge the same for payment of any Debts by them Contracted to any person or persons whomsoever, *unless the same shall be done with the consent of two thirds of the regular Members of the said Corporation.* (Emphasis added).

---

[4] "A__" refers to the Appendix to the Plaintiffs' Opening Brief in Support of their Motion for a Preliminary Injunction.

Article 5th provides that an election shall be held for the membership to vote for Trustees of the corporation. One new Trustee will be elected each year, and that Trustee shall then serve a term of seven years. Article 5th further provides that:

> [T]he said Trustees and their successors shall have the entire direction and disposal of the temporal revenues and concerns of the said Church. . . ."

On July 14, 1924, the Mother Church's certificate of incorporation was amended to change the corporate name to "Mother African Union First Colored Methodist Protestant Church," *i.e.*, the Mother Church. (A155-157). Insofar as the record reveals, that amendment is the only one ever made to the 1813 certificate of incorporation; and it left unaffected the remaining provisions of the original 1813 certificate, including Articles 2nd, 4th, and 5th, which remain in force today.

The plaintiffs are the Trustees of the Mother Church, and the duly elected successors to the Trustees named in the original 1813 certificate. There is no claim or evidence that the plaintiffs were not duly elected as Trustees in accordance with the procedures spelled out in that certificate.

There also is no dispute that until April 6, 1991, the Church owned three properties in Wilmington, Delaware ("the properties"): (i) the church building, located at West Ninth and Franklin Streets, which was deeded to the Church on November 4, 1969 (A19-21); (ii) the Pastor's home, located at 125 West 38th Street, which was deeded to the Church on October 22, 1969 (A23-24); and (iii) Mount Olive Cemetery, located on Lancaster Avenue.

There is no evidence of record that the plaintiff Trustees ever transferred the properties to, or for the benefit of, any other person or entity, or that two-thirds of the corporation's regular members ever assented to any such transfer. Indeed, three of the Trustees, including the oldest living Trustee, have testified

by affidavit that the Trustees never authorized or executed a document, ratified by two-thirds of the corporation's members, that placed any asset of the Church in trust for the benefit of any other entity or organization. (A127-135). That evidence stands uncontroverted.

The other party litigant that claims ownership rights in the aforementioned properties is the Conference. For many years, the Mother Church has had a relationship of some kind with the Conference respecting their common spiritual enterprise. However, from a strictly corporate standpoint, the Conference and the Mother Church have always been separate entities. Although the defendants contended at oral argument that the Conference was the corporation founded in 1813 as the "African Union Church," the record shows otherwise. The Conference was incorporated on September 19, 1941 as the "African Union First Colored Methodist Protestant Church." On March 10, 1953 its certificate of incorporation was amended to change the corporate name to "The Conference of African Union First Colored Methodist Protestant Church," *i.e.*, the Conference.

Article THIRD of the 1941 certificate recites that one of the corporation's purposes was:

> To incorporate and unite the Church Government of the Colored Methodist Protestant Churches under the Doctrine and discipline of the African Union First Colored Methodist Protestant Church of the United States of American or elsewhere as particularly set forth in its Sixteenth Revised Printed Edition of said Doctrine and Discipline published at Wilmington, Delaware, September 8-14, 1926, and the Amendments and additions thereto as afterwards made.

Article THIRD also provides that the corporation was "created solely for Religious and educational purposes," and Article SEVENTH provides that the Conference's temporal affairs shall be conducted by that corporation's Trustees who:

> [S]hall have control of the disposal of the property of *the Corporation*, [and] shall also have power to make, amend, alter or rescind the By-laws of their respective Churches . . . subject, nevertheless to the Rules of Discipline of the General Conference, which General Conference shall in itself be created and established, and its membership shall be composed as set forth in the Rules of Discipline of said Church as hereinbefore referred to. (Emphasis added).

Consistent with Article SEVENTH, Article NINTH provides that:

> There shall be a general conference whose time and places of meeting and membership shall be as prescribed in the Book of Discipline and Doctrine of said Church, and the authority of such Conference shall be superior to that of the Trustees and Members of the individual Church and shall control and direct such Trustees and Members as is more fully from time to time prescribed in said Book of Discipline and Doctrine.

The precise relationship between the Conference and its member churches is anything but clear. What can be gleaned from the record is that the Conference was created as a corporate vehicle to carry out the purposes of an earlier-formed voluntary union, association, or affiliation of the various African Colored Methodist Protestant Churches in a spiritual and religious enterprise. That enterprise, which was formed in 1866, is sometimes described as the "Conference" or the "General Conference." The record further indicates that the terms and conditions of that union, association, or affiliation, are governed at least in part by the *Book of Discipline*, the 1990 version of which has been placed of record.[5]

---

[5] The full title of that document is *The Book of Discipline of The African Union First Colored Methodist Protestant Church and Connection in the United States of America and The World.*

The Historical Preface to the 1990 *Book of Discipline* recites that a General Convention was held in Baltimore, Maryland on August 25, 1866. That Convention founded a General Conference and created a *Book of Discipline*. The preface goes on to state that the representatives of the African Union Church and the First Colored Methodist Protestant met in General Convention on November 25, 1865 and that the Convention resolved to adopt:

> [A] platform to unite the two branches of Zion into one Church, to be known and distinguished by the name of the African Union First Colored Methodist Protestant Church of the United States of America, or elsewhere.
>
> And to consummate this Union the General Convention does hereby constitute a General Conference, to consist of an equal number of delegates from each Church, to be held in the city of Wilmington, Delaware, on the morning of the 25th day of August A.D., 1866.

(Jackson Aff., Exh. 2, pp. ii-iii).

The resolution goes on to recite that the "First General Conference of the Representatives of the African Union Church, and the First Colored Methodist Church, assembled [and] did then and there form a book of discipline for their future government. . . ." (Jackson Dep., Exh. 2, pp. ii-iii).[6]

From the foregoing the following may be concluded, at least preliminarily: (a) The Conference is a corporation entirely distinct and separate from the Mother Church, having been incorporated 128 years after the Mother Church was formed, in order to carry out the spiritual and religious objectives of the

---

[6] The record does not evidence the authenticity or authorship of that resolution, or that the Mother Church formally assented to its provisions. The plaintiffs concede, however, that the Mother Church was, while affiliated with the Conference, subject at least spiritually to the *Book of Discipline*.

General Conference that was established in 1866; (b) The two corporations have not merged, and their relationship, while not easily characterized, is defined at least in part by the *Book of Discipline* which, since its adoption in 1866, has been amended several times; and (c) However the relationship between those corporations may be characterized, there is no evidence that it supplants the power of the Mother Church's Trustees and membership to control the disposition of that Church's physical properties.

The instant litigation is the apparent culmination of a dispute between Bishop Jackson and the late Reverend Maynard Smith, the former Pastor of the Mother Church. According to Bishop Jackson, Reverend Smith was expelled from the Conference. (Jackson Aff., para. 13). When Reverend Smith died, the Bishop or some other agent of the Conference attempted to prevent the funeral from being held at the church building. The Trustees refused to accept that ruling, and allowed Reverend Smith's funeral to take place at the church building.

That and other disputes eventually led the Trustees of the Mother Church to convene a special meeting of the membership on April 9, 1991, to vote on whether to secede and disaffiliate from the Conference. At that meeting, 82 of the approximately 185 members of the congregation attended, and by a vote of 68 to 10 (with 4 abstentions), the members determined to secede from the Conference. The Trustees also voted to secede. (A133, 136).

In anticipation of, or in response to, those actions, Bishop Jackson and/or the Conference took certain measures. They were as follows:

a) On April 6, 1991, Bishop Jackson witnessed eight quitclaim deeds that were recorded with the New Castle County Recorder of Deeds. One of those deeds purported to transfer the contested properties from the Mother Church to the Conference. (A28-35). The deed was not signed or authorized by the plaintiff

Trustees. According to Bishop Jackson, the deeds were executed pursuant to authority granted by resolutions adopted at Conference meetings held on January 12, 1991 and April 6, 1991. (Jackson Aff., paragraphs 21-23). However, no minutes or other document evidencing the proceedings at those meetings were ever placed of record.

b) On April 8, 1991, Bishop Jackson removed then-Pastor Gunther, and replaced him by appointing Thomas E. Moon as Pastor of the Mother Church.

c) On April 10, 1991 the Bishop and/or agents of the Conference purported to remove the plaintiff Trustees "as trustees and as members of the Church, according to church law as set forth in the *Book of Discipline* and in the April 6th resolution . . . ." (Jackson Aff., para. 14). Apparently that was done, in part, because the Trustees had refused to accept Reverend Moon as the Pastor.

d) On April 14, 1991, Reverend Moon asked three persons to be the new Trustees of the Mother Church.[7]

After the April 9, 1991 secession vote, Reverend Moon, with Bishop Jackson's permission, caused the locks on the Church building to be changed and posted security guards outside. (Moon Aff., paragraphs 4-5). As a result, and until this Court issued its temporary restraining order, the members of the congregation were forbidden access to the church building and prevented from worshiping there.[8]

This litigation followed.

---

[7] In his affidavit, Reverend Moon states that his Trustee-designees were elected by a "congregation." (Moon Aff., para. 7). That statement is, however, conclusory and contains no specific facts as to who comprised that "congregation" or by what process that election took place.

[8] It is also claimed that Bishop Jackson attempted to remove funds from the Mother Church's bank accounts and to put the Church's properties up for sale. Those claims are, however, disputed and need not be decided on this motion.

II.

This case represents but one aspect of a larger and highly regrettable controversy: a church divided. That lamentable circumstance inevitably leaves in its wake a host of spiritual and social problems, in addition to those purely legal. Who is now the minister of the congregation? Who are the Trustees? Who are and are not members of the Mother Church?[9] Of these questions this Court is competent to address only the legal, and even then only within the constraints of the First Amendment to the United States Constitution as interpreted by decisions of the United States Supreme Court.

Those decisions forbid civil courts from deciding church property disputes on the basis of religious doctrine and practice. Such courts may – indeed must – resolve such disputes only on the basis of "neutral principles of law," without considering doctrinal matters such as the "ritual and liturgy or the tenets of faith." *Jones v. Wolf*, 443 U.S. 595, 603 (1979) (quoting *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970)); *accord Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Under a neutral principles approach, a civil court may consider, and resolve church property disputes on the basis of, sources such as state statutes, church corporate charters and constitutions, and the language of trusts, deeds and similar granting instruments. If, however, the interpretation of instruments of ownership would require the court to resolve a religious controversy, the court must defer that doctrinal decision to the authoritative ecclesiastical body. *Jones v. Wolf*, 443 U.S. at 604; *Serbian Orthodox Diocese*, 426 U.S. at 709.

---

[9] To the extent this Court is empowered to answer those questions, the answer must await a final hearing. The questions are complex and cannot be decided at this preliminary stage. Indeed, neither counsel has fully briefed these questions.

Mindful of these highly sensitive concerns, the parties have cast their dispute largely on the basis of Delaware corporate and property law principles. And while the defendants have based certain of their preliminary injunction arguments upon the *Book of Discipline*, those arguments do not require this Court to interpret or determine religious doctrine. Essentially what must be decided at this preliminary stage is which corporation – the Mother Church or the Conference – owns the disputed properties. The remaining issues raised by the complaint (to the extent they are constitutionally cognizable) must await the final hearing.

The criteria on a motion for preliminary injunction are well established. The moving party must show probable success on the merits, imminent irreparable harm that will occur absent the injunction, and that the irreparable harm that would result if injunctive relief is denied outweighs the harm that would occur if relief is granted. *Ivanhoe Partners v. Newmont Mining Corp.*, Del. Supr., 535 A.2d 1334, 1341 (1987); *Robert M. Bass Group, Inc. v. Evans*, Del. Ch., 552 A.2d 1227, 1238 (1988).

In this case the harm threatened to the plaintiffs clearly will be imminent and irreparable if injunctive relief is denied. Such harm will also outweigh any likely harm to the defendants if relief is granted. What the plaintiffs will be deprived of is the unfettered use of their property, including their congregants' right to use the church building as a place of worship. Moreover, the defendants, by executing and recording the April 6, 1991 deed purporting to transfer the disputed properties to the Conference have seriously clouded the Mother Church's title to these properties. The harm occasioned by these acts is immediate and substantial, and it cannot be remedied except by an injunction. Nor is there any showing that granting preliminary injunctive relief would harm the defendants more than denying relief would harm the plaintiffs. The defendants intimate that the balance of equities favor their position, but offer no reasoned argument or any evidence to support their suggestion.

Consequently, this motion turns solely upon whether the plaintiffs have demonstrated that they will probably succeed on the merits after a final hearing. For the reasons now discussed, I find that they have, and that a preliminary injunction must issue.

III.

Any analysis of the claims pertinent to this motion must begin with certain fundamental, undisputed facts. Before April 6, 1991, title to the disputed properties resided in the Mother Church. On April 6, 1991, the defendants executed a deed purporting to transfer title to those properties to the Conference. The question, simply put, is whether that April 6, 1991 deed was authorized by persons lawfully entitled to act on behalf of the Mother Church. If so, then no basis for injunctive relief exists; if not, then injunctive relief must be granted. As discussed in Part III A, *infra*, only the Mother Church's Trustees, with the formal concurrence of two-thirds of the members, are empowered to transfer those properties, and those persons never authorized the April 6, 1991 deed. The defendants contend, nonetheless, that despite the authority vested in the Mother Church's Trustees and membership, the *Book of Discipline* and certain purported amendments thereto give the Conference superior, overriding authority over the disputed properties. For the reasons discussed in Part III B, *infra*, I find that the defendants' position has no probable merit.

A.

Article 4th of the Mother Church's certificate of incorporation provides that the Trustees "*shall not* by deed or otherwise dispose of any part or portion of the Estates, real or personal, which may be vested in the said Corporation . . . *unless* the same shall be done with the consent of two-thirds of the regular Members of the said Corporation." (Emphasis added). It is

undisputed that the plaintiff Trustees have never deeded any of the disputed properties to the Conference. Nor have two-thirds of the Mother Church membership ever approved any such property transfer or the execution of the April 6, 1991 deed.

Thus, based on the Mother Church's most fundamental corporate document – its certificate of incorporation – I find at the threshold that (a) the Mother Church owns the properties at issue, and (b) the April 6, 1991 deed purporting to transfer those properties to the Conference was void *ab initio*. For those reasons the plaintiffs have established a high probability of success on the merits of their claims, unless the defendants can demonstrate a superior claim of entitlement to the disputed properties. The defendants assert that they have demonstrated such a superior, overriding claim, arguing that (1) the Mother Church had always held the properties in trust for the Conference, and (2) representatives of the Conference possessed the requisite authority to transfer the properties on behalf of the Trustees.[10] I now address those contentions.

B.

The defendants premise their claim of superior entitlement upon their contention that the Conference is a hierarchical organization whose members (*i.e.*, the local churches, including the Mother Church) occupy a subordinate position that makes

---

[10] In addition to their substantive contentions, the defendants raise two procedural defenses that, they urge, mandates the denial of injunctive relief. Defendants argue that the plaintiffs have no standing to seek relief because they are no longer members of the Mother Church. That argument, however, has been mooted by the joinder of the Mother Church as a party plaintiff. The defendants also contend that the Bishop is not a proper party defendant, because no relief would be effective as against him. That argument is mooted by the joinder of the Conference as a party defendant; moreover, the Bishop is a proper party defendant because the complaint, fairly read, alleges that the acts complained of were committed by him or by others acting under his control. Accordingly, neither procedural defense has colorable merit.

them subject to direction by the Conference in accordance with the *Book of Discipline*. The defendants rely upon two documents that, they claim are resolutions adopted by the Conference on January 12, 1991 and April 6, 1991, respectively, and constitute amendments to the *Book of Discipline*. The January 12, 1991 document pertinently provides that "titles to all properties held . . . by a local church . . . shall be held in trust for [the Conference]." (Jackson Dep., Exh. 3, p. 1). The April 6, 1991 document provides that "the ministers in charge of said [local] churches shall be empowered to sign official documents pertaining to the individual local church and the Conference. . . ." (Jackson Dep., Exh. 4). Based upon those documents, the defendants conclude that the April 6, 1991 deed transferring the properties to the Conference was valid, because (i) those properties were held in trust for the Conference, and (ii) the local minister had the authority to execute a deed transferring the Mother Church's property, notwithstanding the Trustees' and the members' authority conferred by the 1813 certificate of incorporation.

These arguments have no merit for several reasons.

First, while a hierarchical relationship between the Mother Church and the Conference may arguably exist in the religious and spiritual realms,[11] no such relationship has been shown to exist in the temporal realm that governs the ownership and control of the Mother Church's properties. The Mother Church's 1813 certificate of incorporation expressly provides the procedure by which any transfer of the corporation's assets must take place. To validly cede to another entity the Mother Church's power to dispose of its assets, the 1813 certificate provision mandating that procedure would have to be amended in an appropriate way. That has never occurred.

---

[11] The Court expressly disclaims making any finding as to whether a hierarchical relationship exists in the religious and spiritual realms. Even if such a finding were within this Court's sphere of competence, it is unnecessary to a resolution of the pending motion.

Second, it is undisputed that neither the plaintiff Trustees nor their predecessors have ever executed any document, ratified by two-thirds of the Mother Church's members, placing any of the Mother Church's assets in trust for the benefit of any other entity. Nor has any other evidence of a trust arrangement, particularly evidence that would satisfy the evidentiary requirements of the Statute of Frauds, been submitted. *See* 6 *Del. C.* sec. 2714(a). *See also* 76 Am. Jur. 2d, *Trusts*, sec. 44 at 290-91, 294 (1975).

Third, by the defendants' own characterization, those documents occupy, at best, the status of By-laws of the Mother Church. Assuming without deciding the validity of that characterization,[12] the January 12th "by-law" placing local church properties "in trust" for the Conference runs afoul of the principle that where a by-law conflicts with the provisions of the charter, the by-law is a nullity. 8 *Del. C.* sec. 109(b); *Centaur Partners v. Nat. Intergroup, Inc.*, Del. Supr., 582 A.2d 923, 929 (1990); *Burr v. Burr Corp.*, Del. Ch., 291 A.2d 409, 410 (1972). The January 12th document conflicts with the 1813 certificate of incorporation, because Article 2nd of the certificate states that the land is held in trust for the religious uses of the "said Union Church," which is now the Mother Church – not the Conference.[13] The April 6th document (which purports to empower the minister to transfer church property on behalf of the

[12] For present purposes, the Court simply accepts *arguendo* Bishop Jackson's characterization that the *Book of Discipline* contains the current rules of the Church, which are the "by-laws of the corporation." (Jackson Aff., para. 9). Defendants' counsel also advocated that characterization at oral argument.

[13] At oral argument, defendants' counsel relied upon Article 2nd of the 1813 certificate of incorporation, which states that the church properties are held in trust for the religious uses of the "said Union Church." Counsel argued that the "Union Church" and the Conference were one and the same. However, the evidence shows precisely the contrary: the Conference (as an association) did not come into existence until 1866, and it did not take a corporate form until 1941. The 1813 certificate could not possibly have created a trust relationship in favor of an organization that did not then exist.

Trustees) conflicts with the certificate of incorporation, because Article 4th prohibits *any* disposition of Church assets without the approval of the Trustees and two-thirds of the corporation's members. Again, no such consent was given here.

Fourth, the documents, by their own terms, do not create any superior title or claim of title in the Conference. Section II of the January 12th document states that "All provisions of the Discipline relating to property . . . and relating to the formation and operation of any corporation . . . are conditioned upon their being in conformity with the local laws, and in the event of conflict therewith [sic] the local laws shall prevail. . . ." (Jackson Dep., Exh. 3, p. 3). "Local law" is defined to include "the laws of the county, state, or other like political unit within the geographical [sic] bounds of which the church property is located." *Id.* Thus, by its own terms, the January 12th "by-law" trust provision gives way to local law. Under local law, the Mother Church clearly owns the properties. See Part III A, *supra*. And while the April 6th document purports to empower the minister in charge to sign official documents pertaining to the individual local church, it does not authorize the minister to do so without the consent, or over the opposition, of the Trustees in matters where Trustee approval is required.

Fifth, the January 12th and April 6th documents do not constitute credible evidence that the Conference ever took the actions that the defendants attribute to it. Neither document appears on the stationery of the Conference: the letterhead is of an organization having a different name. The record contains no minutes or other documents evidencing official action taken by the Conference on those dates — only the Bishop's conclusory affidavit testimony is offered. Indeed, the Court is uncertain as to what these documents truly represent and the basis of their authenticity. Are they resolutions? Of what body? Are they part of the *Book of Discipline*? By what authority? While answers to these questions may well be forthcoming at

the trial stage, no answers have been provided here. On the present record these documents appear to be self-serving and, in all events, are unpersuasive.

IV.

Having determined that the plaintiffs are entitled to preliminary injunctive relief, the Court must next decide what form that relief should take. One alternative is to continue the temporary restraining order in effect until this action is finally determined on its merits. The other alternative, which the plaintiffs advocate, is to enter an order that would effectively restore to the plaintiffs unrestricted control of the properties, *pendente lite*.

Because of the Court's preliminary rulings and of the issues still remaining to be determined at final hearing, there are several open questions that concern the governance of the Mother Church, and, consequently, the management of its property and affairs. These questions include the identity of the lawful Trustees and congregation, and whether the Mother Church has lawfully disaffiliated from the Conference. Should those questions be resolved in favor of the Conference, one result may be to empower the defendants to influence in some (as yet undefined) manner the management and disposition of the Mother Church's properties.

Given these uncertainties, the Court is persuaded that a form of interim injunctive relief that would altogether exclude the defendants from access to the Mother Church's properties at this stage is inadvisable. It would risk irreparably prejudicing the defendants' position before the case has been adequately presented and decided. That observation is not intended in any way to suggest my view of the ultimate outcome, but only to strike an appropriate interim balance between the legitimate interests of both sides. That balance, in my view, is best struck

by (i) continuing the temporary restraining order in effect until this action is finally determined on the merits, and (ii) scheduling a final hearing on an expedited basis, consistent with this Court's other commitments. That result will permit both sides of the dispute to have access to the church building until this litigation is resolved, and will minimize the risks inherent in giving either side unfettered control of the properties at this preliminary stage.

Accordingly, the plaintiffs' motion for a preliminary injunction is granted. The temporary restraining order previously entered shall remain in effect until further order of the Court. Counsel shall promptly confer with each other, and then with the Court to schedule expedited discovery and trial.

IT IS SO ORDERED.